

11.08.00.00 - DELINQUENT ACCOUNTS

11.08.01.00 General

All rents shall be collected in accordance with the terms and conditions of the lease or rental agreement. Our standard monthly rental agreement provides that rent is due in advance on the 1st of the month. Rent not received by the 1st of the month is delinquent.

The agreement further provides that a late charge will be charged if the rent is not received by the 10th of the month. A postmark prior to the 10th of the month does not constitute receipt by the 10th of the month.

11.08.02.00 Suggested Methods of Collection

The Agent should notify the tenant personally by telephone or letter that rent is delinquent and must be paid. In many cases, the tenant will pay the rent after this contact and will be prompt in paying thereafter. If the tenant is delinquent again the following month, however, the Agent shall send a strongly worded letter. If the Agent elects to enter into a payment plan agreement, the agreement shall be in writing and approved by the Branch Chief (Senior level or above). If the tenant fails to make a payment plan payment, a 30-day or 60-day notice will be served immediately. No further payment plans or compromises will be offered. Payment plans are not to be used as a regular way of doing business, but for those exceptional cases where payment plans are warranted.

If a tenant has been delinquent for three consecutive months, terminating the tenancy may be in order even though the rent is eventually paid each month. If the situation warrants, vacancy may be requested prior to this time. The Property Manager shall make this decision.

11.08.03.00 3-Day Notice to Pay Rent or Quit

If rent is not paid immediately after the contacts and letter, the Agent shall serve a 3-day notice demanding that the tenant pay the total rent delinquency within three days or vacate the property. The 3-day notice should cover the current month's rent, plus any previous period of delinquency that may still be unpaid. The Agent shall immediately start eviction proceedings upon expiration of the three days (see Form RW 11-11, 3-Day Notice to Pay Rent or Quit). The Agent shall send copies of eviction notices and other related documents to Headquarters Cashiering to stop acceptance of payment. Partial or total acceptance of payment will forfeit the legal effect of the 3-day notice.

If a tenant is chronically delinquent but not currently delinquent, a 30-day or 60-day notice terminating the tenancy may be in order (see RW 11-10, Notice of Termination of Tenancy and Notice to Quit). If a 30-day or 60-day notice is served after a 3-day notice has been served, the legal effect of the 3-day notice is lost.

A 3-Day Notice to Pay or Quit and a Notice of Termination of Tenancy and Notice to Quit may be served concurrently. This process may be used when you want to collect some money from the tenant but still wish to proceed with an eviction. Even though money is accepted, thus forfeiting the legal effect of the 3-Day Notice to Pay or Quit, it does not cancel the Notice of Termination of Tenancy and Notice to Quit.

See Section 11.07.21.00, Notices, for additional information and requirements in regard to serving notices to vacate or to terminate the tenancy.

11.08.04.00 Method of Service of Notices

The landlord's right to serve a 3-day notice to pay rent or quit is provided for in Code of Civil Procedures (CCP) Section 1161. The 3-day notice is served to the delinquent tenant for the total amount of unpaid rent as of the day of service.

Service of a 3-day notice or a 30/60-day notice is governed by CCP Section 1162 and shall be made as follows:

- By delivering a copy to the tenant personally.
- If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence.
- If such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner. The effective start date of the 3-day notice is one day following the postmark date.
- Service of a notice on a corporation differs slightly in that the notice must be served on a corporate officer or an authorized agent of the corporation who will accept on behalf of the corporation.

For practical purposes, “a person of suitable age and discretion” should be over 18 years of age.

Ordinary mail may be used when mailing copies of notices. To substantiate service, the server shall execute a proof of service by posting and shall place a copy in the rental file. As an alternative, the tenant’s copy may be sent certified mail, in which case the Agent does not need to sign a proof of service. The certified mail receipt shall be placed in the rental file.

The Agent shall make a diligent effort to effect personal service since that is the most effective and uncomplicated method of service.

NOTE: If the tenant is eligible for relocation benefits, region/district policy may require that the RAP Unit serve the notice. At the least, Property Management must coordinate service with the RAP Unit to ensure the tenant is advised of their continuing rights in regard to relocation assistance. See Chapter 10, Relocation Assistance.

The Agent shall send copies of a 3-day notice, eviction notice, or any other related documents to Headquarters Cashiering to stop acceptance of payment. Partial or total acceptance of payment will forfeit the legal effect of the notice.

11.08.05.00 Legal Remedies for Collection and Procedures

Various legal procedures are available to Agents for specific purposes. Agents should bear in mind, however, that they are not attorneys and shall obtain all legal advice and interpretations from Legal.

The state shall resort to legal proceedings to effect rent collection and/or eviction of delinquent tenants because of nonperformance of contractual obligations, usually nonpayment of rent. In addition, unlawful detainers are sometimes necessary for property clearance to meet certification dates. General procedures are outlined in Exhibit 11-EX-7, District Right of Way Procedure: Vacating Premises - Unlawful Detainer Action. Since procedures may vary from one judicial district to the next, it is incumbent upon Agents to discover the general requirements for their areas of responsibility.

11.08.06.00 Dishonored Checks

If a tenant/lessee has a dishonored check returned to the Department for any reason, payment is considered not received. There will be a \$25 fee automatically charged to the account for the first dishonored check and a \$35 fee charged for the second dishonored check in a 12-month period. If tenant/lessee fails to submit an acceptable replacement payment by the 10th of the month, the account will be considered delinquent and a late fee will be assessed.

If tenant/lessee has two dishonored checks within any 12-month period, the Department will no longer accept personal checks on that tenancy.

11.08.07.00 **Late Charges**

A late charge shall be assessed if the full amount of rent is not received on or before the 10th of each month. The late charge covers damages resulting from breach of the lease or rental agreement. The amount is determined by using 6% of the monthly rent as a guideline and shall not exceed 10%. The amount is entered in the late payment clause in the rental/lease agreement. Late charges may be waived for government agencies.

NOTE: The 6% figure is based on the figure relating to mortgages or deeds of trust in the California Civil Code and is generally used by the property management industry. The 10% figure is related to the maximum rate of interest in California chargeable by most persons (voluntary usury).

11.08.08.00 **Vacated Delinquencies**

When a delinquent tenant vacates and does not leave a forwarding address, the district has 15 calendar days to conduct an investigation to locate the former tenant before further collection efforts proceed. The district does not, however, have to wait until the end of the 15 days to submit the account to the Division of Accounting, R/W Accounts Receivable.

The following are sources of information that may lead to the former tenant's whereabouts:

- Certified mail with return receipt requested sent to the tenant's last address.
- Utility companies that show transfer of service.
- Banks, places of employment, or other references that may be listed on the tenant's rental application.
- Labor union affiliations, depending upon the tenant's profession.
- Department of Motor Vehicles, using driver's license number, California ID number, or car license number from the application.

As soon as a delinquent tenant vacates, the district should process the vacated tenancy through the RWPS Adjustment Screen. Within 15 days, the district should refer the account to Accounting for write-off or for referral to the collection agency for further collection efforts.

11.08.08.01 **Amounts \$250 or Less**

If the delinquent amount is \$250 or less, the district forwards completed Form RW 11-25, Authorization to Write Off or Adjust Accounts Receivable Bill, to Accounting and requests write-off of the account through the RWPS Adjustment Screen. The write-off request should include a brief justification (e.g., collection efforts are not cost effective based on Board of Control guidelines).

Accounting will immediately write off the account. If the delinquent amount is over \$100 and the delinquent tenant's Social Security Number is known, Accounting will submit the account to the Franchise Tax Board (FTB) for two successive years only. However, the Intercept Program is for intercepting refunds of Personal Income Tax accounts only and cannot be used for corporations or partnerships.

If all or a portion of the delinquent amount is collected, either through the FTB Intercept Program or from the vacated tenant, Accounting will reestablish the receivable account.

11.08.08.02 Amounts Greater Than \$250

If the delinquent amount is greater than \$250, the district prepares an Exhibit 11-EX-39, Collection Agency Transmittal, and forwards it to Accounting with the required documentation listed below. The vacancy date and amount due will be of critical importance if the collection agency pursues legal action against the debtor, and the district is responsible for ensuring the accuracy of this information. In addition, the district must enter the date the collection package is forwarded to Accounting on the Delinquent Tenancy Screen (TPR521M) in RWPS.

- Copy of first and last pages of rental agreement
- Copy of rental application
- New address documentation
- Copy of note about efforts to collect
- Copy of judgment
- Copy of voided check
- Copy of driver's license or California identification card

Accounting will verify the amount owed and forward the collection package to the collection agency under contract to the Department. In addition, Accounting will submit accounts with Social Security Numbers to FTB under terms of its Intercept Program.

Once an account is referred to the collection agency, Accounting takes on all responsibility for the account and makes all further contact with the collection agency. Any calls or letters from the delinquent tenant should be referred to the collection agency for response. **Under no circumstances should the district enter into a repayment plan with the delinquent tenant.**

In accordance with terms of the contract, the collection agency will submit a monthly report to Accounting showing the status of all accounts referred to them for collection. Accounting will forward a copy of the report to HQ R/W to be shared with the districts.

Under terms agreed to among the collection agency, Accounting and HQ R/W, Accounting will write off accounts that are deemed to be uncollectable. If all or a portion of the delinquent amount is subsequently collected, Accounting will reestablish the receivable account.